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STATE CAPITOL  
PHOENIX, ARIZONA

October 15, 1965

DEPARTMENT OF LAW LETTER OPINION NO. 65-39-L (R-137)

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REQUESTED BY: Honorable Fred Udine  
State Senator Coconino County

QUESTION: May a city government assume the operation of an existing television translator system and operate the same for the benefit of the citizens of the community and make a uniform charge to all city customers for such service to be included with monthly water, sewer and garbage charges?

ANSWER: Yes.

Article 2, Section 34 of the Constitution of Arizona provides:

"The State of Arizona and each municipal corporation within the State of Arizona shall have the right to engage in industrial pursuits."

Article 13, Section 5 of the Arizona Constitution provides:

"Every municipal corporation within this State shall have the right to engage in any business or enterprise which may be engaged in by a person, firm or corporation by virtue of a franchise from said municipal corporation."

Arizona Revised Statutes 9-511 (A) provides:

"A municipal corporation may engage in any business or enterprise which may be engaged in by persons by virtue of a franchise from the municipal corporation,

and may construct, purchase, acquire, own and maintain within or without its corporate limits any such business or enterprise. A municipal corporation may also purchase, acquire and own real property for sites and rights of way for public utility and public park purposes, and for the location thereon of water works, electric and gas plants, municipal quarantine stations, garbage reduction plants, electric lines for the transmission of electricity, pipe lines for the transportation of oil, gas, water and sewage, and for plants for the manufacture of any material for public improvement purposes or public buildings."

The section of the Arizona Constitution authorizing municipal corporations to engage in industrial pursuits, constitutes a special grant to all municipalities within the state to engage in any business, which the legislature can in no way modify. City of Tucson vs. Polar Water Co., (1953), 76 Ariz. 126, 259 P.2d 561. Although Article 2, Section 34 of the Constitution is not self-executing, A.R.S. 9-511 authorizes municipal corporations to engage in any business which may be engaged in by virtue of a franchise from a municipal corporation.

Whether or not a municipality could operate a television translator system was first considered in our Opinion No. 57-112. In that opinion it was stated that the operation of a television translator system could be considered to be a business so affected with a public interest that it would be proper for a municipal corporation to engage in such a business and that it could, depending upon the circumstances, be considered as a public utility. A.R.S. 9-514 provides that the acquisition of public utility property by municipal corporations must be authorized by the affirmative vote of a majority of the qualified electors who are taxpayers of the municipal corporation voting at a general or special municipal election duly called and held for the purpose of voting upon the question.

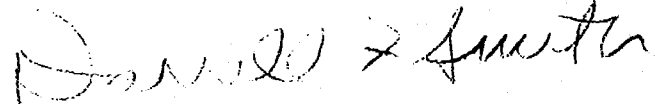
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It is therefore the opinion of this office that if the television translator system has been granted a certificate of public convenience and necessity as a public utility by the Corporation Commission, then the facility could be acquired, but only after a successful election as provided in A.R.S. 9-514. If, however, the facility is operated as a private concern, the city could purchase it outright without such election.

Respectfully submitted,



DARRELL F. SMITH  
The Attorney General

DFS/cah